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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 TRAVIS SKYLER OWEN FRANKLIN,

9 Plaintiff,

10 v.

11 DIEGO LOPEZ DeCASTILLA,

12 Defendant.

Case No. 2:17-cv-594 JLR-BAT

**REPORT AND  
RECOMMENDATION**

13 Plaintiff Travis Skyler Owen Franklin, proceeding *pro se* and *in forma pauperis*, filed his  
14 amended complaint on May 14, 2017. Dkt. 6. Defendant filed his answer on August 1, 2017  
15 (Dkt. 15), and on August 4, 2017, the Court entered a Pretrial Scheduling Order (Dkt. 17). On  
16 August 10, 2017, plaintiff filed a motion to voluntarily withdraw his amended complaint and  
17 requested that this action be dismissed without prejudice. Dkt. 18. Defendant has no objection  
18 to the requested dismissal without prejudice. Dkt. 19.

19 The Court recommends **DISMISSING** this lawsuit without prejudice pursuant to Federal  
20 Rule of Civil Procedure Rule 41(a)(1) and (2).

**DISCUSSION**

21 Federal Rule of Civil Procedure Rule 41(a) governs the voluntary dismissal of an action  
22 in federal court. Rule 41(a)(2) provides that unless a plaintiff files a notice of dismissal before  
23 the opposing party serves either an answer or a motion for summary judgment, or the parties

1 stipulate to the dismissal of the action, “[a]n action may be dismissed at the plaintiff’s request  
2 only by court order, on terms that the court considers proper ....” Fed. R. Civ. P. § 41(a)(2). The  
3 decision to grant or deny a motion pursuant to Rule 41(a)(2) is within the sound discretion of the  
4 trial court and may be reviewed only for abuse of that discretion. *Sams v. Beech Aircraft Corp.*,  
5 625 F.2d 273, 277 (9th Cir.1980).

6 A motion for voluntary dismissal pursuant to Rule 41(a)(2) should be granted unless a  
7 defendant can show that it will suffer some plain legal prejudice as a result of the dismissal.  
8 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir.2001); *Stevedoring Services of America v. Armilla*  
9 *Intern. B.V.*, 889 F.2d 919, 921 (9th Cir.1989) (stating that the purpose of Rule 41(a)(2) is “to  
10 permit a plaintiff to dismiss an action without prejudice so long as the defendant will not be  
11 prejudiced ... or unfairly affected by dismissal.”). As previously noted, defendant has filed an  
12 answer to plaintiff’s complaint, but is not opposed to the requested dismissal without prejudice.  
13 Dkt. 19.

#### 14 CONCLUSION

15 The Court recommends **DISMISSING** this lawsuit without prejudice. If it is not  
16 plaintiff’s intention to voluntarily dismiss his lawsuit, he should so state in his objections. Any  
17 objections to this Recommendation must be filed no later than **Tuesday, September 12, 2017**.  
18 The Clerk should note the matter for **Thursday, September 14, 2017**, as ready for the District  
19 Judge’s consideration if no objections are filed. Objections shall not exceed ten pages. The  
20 failure to timely object may affect the right to appeal.

21 DATED this 22nd day of August, 2017.

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23 BRIAN A. TSUCHIDA  
United States Magistrate Judge